

STATE OF MICHIGAN
COURT OF APPEALS

SUE E. RADULOVICH,

Plaintiff-Appellant,

v

THERESA M. TENAGLIA, a/k/a THERESA
LEVICK, a/k/a TERRY TENAGLIA, a/k/a
TERRY LEVICK,

Defendant-Appellee.

UNPUBLISHED

June 7, 2005

No. 253267; 256658

Macomb Circuit Court

LC No. 2002-003284-CZ

Before: Neff, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting defendant's motion for summary disposition of her defamation lawsuit and granting defendant \$15,084 in frivolous suit sanctions. We affirm.

Plaintiff filed suit against defendant's ex-husband in Wayne Circuit Court, a dispute addressing construction activities involving his home located next to plaintiff's residence. The relationship between defendant and her ex-husband was acrimonious, and police reports documented allegations of abuse and credit card fraud by the couple. Plaintiff listed defendant on her witness list in the neighboring land dispute. Defendant was contacted by her ex-husband to determine why she was listed on the witness list. Defendant advised her ex-husband that she had consulted with plaintiff during the divorce proceeding. Defendant also reported that she received legal advice and assistance from plaintiff when trying to obtain ownership of the marital home and in filling out documentation to support her personal protection order against her ex-husband. Defendant further revealed that plaintiff had loaned electronic equipment to defendant in order to record incriminating telephone conversations. Defendant provided a sworn statement to the attorney representing her ex-husband in the land dispute involving plaintiff. Based on the sworn statement, the ex-husband filed a countercomplaint against plaintiff in the land dispute.

Plaintiff filed a request for a retraction of the statement from defendant. This litigation was then filed in Macomb Circuit Court based on the location of the alleged defamatory statements. Defendant unsuccessfully moved for summary disposition on two occasions. However, a successor trial judge requested that the parties appear for an evidentiary hearing to determine the propriety of summary disposition. After receiving documentation at the hearing,

the trial court granted the defense motion for summary disposition. Further, the trial court granted the defense motion for sanctions based on the frivolous nature of the filing.

As an initial matter, plaintiff alleges that, based on procedural rules, the trial court improperly granted summary disposition. Plaintiff alleges that defendant essentially engaged in judge shopping by filing three motions for summary disposition before three different judges. Plaintiff further alleges that she had no obligation to respond to the third motion for summary disposition because it was not raised and supported in accordance with the court rules. Plaintiff also alleges that she was denied her right to a jury trial when the trial court made factual findings and held an evidentiary hearing. The procedural challenges are without merit.

A circuit court judge is required to follow published decisions of the Court of Appeals and Michigan Supreme Court. *People v Hunt*, 171 Mich App 174, 180; 429 NW2d 824 (1988). There is no requirement that one circuit court judge follow the decision of another. *Id.* Plaintiff's contention that defendant's renewed motion was insufficient is also without merit. Defendant renewed its motion for summary disposition and supplemented its motion, noting that the earlier motion was denied as premature because discovery had not yet occurred. However, since the motion had been denied, defendant alleged that plaintiff had not engaged in discovery. Additionally, the court rules provide that documentary evidence "then filed in the action" must be considered by the trial court when considering a motion for summary disposition brought based on MCR 2.116(C)(1)-(7) or (10). MCR 2.116(G)(5). Accordingly, it was proper for the trial court to consider the previously filed motion and brief in support of summary disposition in examining the renewed motion for summary disposition. Finally, when a motion for summary disposition is denied, the court is given discretion on how to proceed. The court may order an immediate trial, MCR 2.116(I)(3), may set a time for further pleadings or amendments, MCR 2.116(J)(1)(a), and may examine evidence before it to determine what facts are in dispute. MCR 2.116(J)(1)(b). In the present case, the trial court set the matter for an evidentiary hearing to determine the issues that remained in dispute.¹ Accordingly, the procedural challenges raised are without merit.

"An absolutely privileged communication is one for which no remedy is provided for damages in a defamation action because of the occasion on which the communication is made." *Couch v Shultz*, 193 Mich App 292, 294; 483 NW2d 684 (1992). The issue of attachment of a privilege presents a question of law for the trial court. *Id.*; see also *Tocco v Piersante*, 69 Mich App 616, 628; 245 NW2d 356 (1976) ("The question of whether or not a privilege attaches under undisputed circumstances is a question of law for the judge."). If absolutely privileged, a

¹ At a hearing held on May 12, 2003, the trial court expressly stated that it needed an evidentiary hearing to determine the propriety of summary disposition, and the hearing would narrow the issues in order to appropriately manage the case. Plaintiff then characterized the hearing as "a mini trial," and the trial court agreed. On September 11, 2003, the evidentiary hearing was held. Despite the prior notice of the nature of the hearing, plaintiff objected to the presentation of evidence, asserting that it was occurring "by ambush with no chance to prepare." On the contrary, plaintiff was given ample notice of the basis of the hearing and the reason for the hearing.

communication is not actionable even if it was false and maliciously published. *Tocco, supra* at 629. However, in the context of a qualified privilege, proof of actual malice will overcome the qualified privilege. *Id.* The classification of absolute privilege is narrow, and it is generally limited to legislative proceedings, judicial proceedings, acts of State, and acts performed in the exercise of military authority. *Mundy v Hoard*, 216 Mich 478, 490-491; 185 NW 872 (1921). “In judicial proceedings the protection of the rule extends to judges, counsel and witnesses.” *Id.* “Statements made by witnesses during the course of such [judicial] proceedings are absolutely privileged, provided they are relevant, material, or pertinent to the issue being tried.” *Couch, supra* at 295. This immunity is extended to every step in the legal proceeding and governs anything said in relation to the matter at issue, including pleadings and affidavits. *Id.* The absolute privilege provided in judicial proceedings is to be liberally construed such that a participant in a legal proceeding is free to express him or herself without fear of retaliation. *Id.*

In the underlying civil land dispute case, plaintiff listed defendant on her witness list. Plaintiff’s adversary in this civil land proceeding was the ex-husband of defendant. Based on the listing on the witness list, defendant was contacted and disclosed her alleged relationship and contacts with plaintiff. Defendant then gave a sworn statement to the attorney for her ex-husband. Consequently, defendant gave a statement during the course of judicial proceedings because her participation was disclosed by plaintiff on her witness list, and the ex-husband was entitled to engage in discovery of plaintiff’s case. The trial court properly granted defendant’s motion for summary disposition because the statement was an absolutely privileged communication for which there is no remedy in a defamation action. *Couch, supra.*²

Moreover, we cannot conclude that the trial court’s decision to award sanctions for the filing of a frivolous suit was clearly erroneous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). Plaintiff raises various issues regarding standing, actual attorney fees incurred, authority to support an award of costs and attorney fees, collateral estoppel and res judicata, and an evidentiary hearing regarding costs and attorney fees. However, the trial court’s order imposed a sanction for the filing of a frivolous action, and the measure of the sanction was based on costs and attorney fees. The trial court has inherent authority to impose sanctions on the basis of party or attorney conduct. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 638-641; 607 NW2d 100 (1999). Under the circumstances of this case, we cannot conclude that the trial court’s decision was an abuse of discretion. *Id.* at 642. Although three motions for summary disposition were filed, there was no record evidence of a defamatory statement made outside the context of the judicial proceeding. There was no documentary evidence to indicate

² Plaintiff contends that any statements by defendant were not privileged communications because they did not occur during the course of judicial proceedings, but were given “at a party” or “at a bar” when defendant had drinks with her ex-husband. However, plaintiff presents no affidavit or deposition testimony by defendant, her ex-husband, or any individual at the “bar” or “party” to support the statement, contrary to MCR 2.116(G)(4). Rather, plaintiff misconstrues a statement by defense counsel wherein it was stated that: “Terry Tenaglia met with [her ex-husband], a party, and told him what happened.” This reference to “party” as transcribed does not refer to a celebration or bar, but rather, refers to the ex-husband’s status as a party in the civil land dispute. Consequently, this assertion is completely without merit.

that defendant's statements were made "at a party." Rather, the statement of the defense attorney indicated that the statement was made to "a party." There was no need for the trial court to hold an evidentiary hearing under the circumstances, particularly since the sanctions issue was pending for six months. *Persichini, supra* at 644-645 ; see also *Klco v Dynamic Training Corp*, 192 Mich App 39, 42-43; 480 NW2d 596 (1991). Accordingly, we cannot conclude that the award was an abuse of discretion, and the arguments raised by plaintiff are simply without merit.

Affirmed.

/s/ Janet T. Neff

/s/ Donald S. Owens

/s/ Karen M. Fort Hood